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IN THE

Supreme Court of the United States

October Term 1947

No.....

PAUL W. SAMPSELL, as Trustee in Bankruptcy for the Estate of C. A. REED FURNITURE COMPANY, a corporation, Bankrupt,

Petitioner,

vs.

LAWRENCE WAREHOUSE COMPANY, a corporation,

Respondent.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Supreme Court of the United States:

The petitioner, Paul W. Sampsell, as Trustee in Bankruptcy for the Estate of C. A. Reed Furniture Company, a corporation, Bankrupt, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit rendered and entered May 12, 1948 [R. 69-70] and numbered therein as 11844. [Opinion, R. 62-69.] Such judgment affirmed a summary judgment entered by the District Court of the United States for the Southern District of California, Central Division, on December 29, 1947, in favor of the above named respondent. [R. 51-52.]

Summary and Short Statement of Matter Involved.

By his complaint, plaintiff sought recovery from respondent, Lawrence Warehouse Company and another defendant, California Bank, for the value of merchandise warehoused by the bankrupt, C. A. Reed Furniture Company, with respondent, which in turn issued its warehouse receipts for such merchandise to California Bank as security for loans made by that defendant to the bankrupt. Except for the difference in dates, serial numbers and the merchandise covered thereby, these warehouse receipts were all in identical form to the one attached to the complaint as "Exhibit A." [R. 19-20.]

Each such receipt acknowledged the receipt by respondent of the merchandise, described on the face thereof, from the bankrupt, "for the account of and to be delivered without surrender of this warehouse receipt upon the written order of California Bank."

All of the merchandise involved in these various warehouse receipts is listed on "Exhibit B" to the complaint [R. 21-36], and is alleged to have had a value of $83,808.00 at the time it was wrongfully delivered by respondent to the California Bank [R. 6], the pledgee of these warehouse receipts. [R. 4-6.] The unpaid balance of such bank loans aggregated $89,963.37 at the time the California Bank was given possession of such merchandise by respondent on June 26, 1947. [R. 4.]

C. A. Reed Furniture Company was adjudicated a bankrupt on July 11, 1947, and plaintiff was thereupon appointed its trustee. [R. 2-3.] Prior to the filing of this action, California Bank had disposed of this merchandise, so appellant sought a money judgment for its value in this action.

Respondent moved for a summary judgment, and the District Court granted such motion and entered judgment against petitioner. This judgment was affirmed by the Circuit Court of Appeals on May 12, 1948, and a petition for rehearing was denied on June 9, 1948.

The District Court filed a brief memorandum opinion predicating its decision on a proposition of law at variance with both the decisions of this Court, the Federal Courts, and the courts of the State of California. The Circuit Court of Appeals impliedly disapproved the District Court's reasoning, by ignoring it and by basing its decision on an entirely different ground, which the District Court, in turn, had orally rejected in open court and impliedly disapproved by failing to embrace in its memorandum opinion.

Petitioner's action was predicated upon the contention that the pledgee's lien of the California Bank was void because the warehouse receipts issued by respondent to that bank were void. The invalidity of those receipts arose from the fact that respondent in issuing such receipts had failed to have them show on their faces the rate of storage charges per month or per season as required by section 1858b of the Civil Code of California.

Section 1858f of such Civil Code makes it a felony to violate any of the provisions of that section 1858b and provides heavy penalties by fine or imprisonment or both, for any such violation.

Under paragraphs XII and XIII of the complaint, the necessary facts are alleged to show that the bankrupt was insolvent in the bankruptcy sense at the time that possession of this merchandise was delivered by respondent to the California Bank, and at the time that this bank disposed of the same. [R. 9-12.] Knowledge on the part of

both respondent and California Bank of such insolvency is also alleged. [R. 10.] The extent of such continuing insolvency is further demonstrated by allegations showing debts of the bankrupt of approximately $173,717.96 as against assets of not to exceed $25,000.00. These computations do not include debts to secured creditors who have availed themselves of such security, nor do they include actions of this character to recover asserted preferential transfers as assets.

The pledge to California Bank being invalid, it had no right to preferential treatment as a creditor of the bankrupt, and it is accountable to the petitioner, as trustee, for the value of the merchandise which it received and disposed of. In other words, it is a general creditor and not a valid lien creditor. The respondent is likewise liable in damages to petitioner for having wrongfully delivered such merchandise to the California Bank whose only claim to possession thereof arose from the issuance to it, as pledgee, of the void warehouse receipts.

The fact that respondent might, in turn, have a cause of action against the California Bank for the value of the merchandise which it mistakenly delivered to that bank, or that one or both of those two defendants may be entitled to participate as general creditors in the assets of the bankrupt is material here only to emphasize that petitioner's action was to recover the value of merchandise preferentially transferred to defendant California Bank by respondent warehouse company.

The suit is not one to forfeit the proceeds of a loan to the bankrupt, but to prevent such lender from enjoying the preferential treatment as a valid lien claimant when its lien was void. The jurisdiction of the District Court over this action is conferred by sections 96(a), 96(b),

107(a), 107(e) and 110(e) of Title 11, U. S. C. A., relating to recoveries for preferential and void transfers of property of the bankrupt.

Rule 20(a) of the Federal Rules of Civil Procedure authorizes the joinder of the two defendants in this action.

Basis of Jurisdiction of the United States Supreme Court to Review the Judgment.

The statutory authority upon which it is contended that this court has jurisdiction to issue a Writ of Certiorari and review the judgment in question is Section 240(a) of the Judicial Code, as amended 43 Stat. 938 (Title 28, United States Code Annotated, Section 347a). Jurisdiction is also conferred by sections 47a and 48c of Title 11, U. S. C. A., relating to bankruptcy.

See also *Childs v. Ultramares Corp.* (Second Circuit), 40 F. (2d) 474, at 477, where it is said:

> " 'Controversies' are ordinary suits in equity or actions at law between the trustee as such and adverse claimants of property; . . ."

The Questions Presented.

1. Were sections 1858b and 1858f of the California Civil Code (adopted in 1905), repealed, either expressly or by implication, by the Warehouse Receipts Act which was adopted in 1909? Stated in another way, are the provisions of those two acts inconsistent and repugnant to one another?

2. If no such repeal was effected, then were not the warehouse receipts void as being issued in violation of a criminal statute? If they were void, was not the pledge which depended upon them also void or unperfected so as to afford the pledgee no prior rights to the merchandise involved?

Reasons for Allowing the Writ.

1. The decision of the Circuit Court to the effect that the Warehouse Receipts Act (Act 9059, Deering's California General Laws), repealed sections 1858b and 1858f of the California Civil Code conflicts with applicable decisions of the California courts.

2. Such decision is largely predicated upon a prior decision of that court in *Heffron v. Bank of America,* 113 F. (2d) 239, which held that the Warehouse Receipts Act was intended to be the sole repository of the law relating to warehoused goods, and, therefore, had repealed section 3440 of the Civil Code in so far as that section related to bulk sales of warehoused goods. Since that decision the California legislature has repudiated that decision by amending section 3440.5 of the Civil Code by specifying the conditions upon which section 3440 should and should not apply to warehoused goods. The decision is, therefore, contrary to the legislature's expressed intent.

Conclusion.

For the reasons above assigned, petitioner prays that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

THOMAS S. TOBIN,
Attorney for Petitioner.

FRANK C. WELLER and
JAMES A. MCLAUGHLIN,
Of Counsel.

State of California, County of Los Angeles—ss.

Thomas S. Tobin, being first duly sworn, deposes and says that he is the attorney for the petitioner named in the foregoing Petition for Writ of Certiorari; that he has read the foregoing Petition for Writ of Certiorari and knows the contents thereof; and that the same is true of his own knowledge except as to the matters which are therein stated upon his information or belief, and as to those matters, that he believes them to be true.

THOMAS S. TOBIN.

Subscribed and sworn to before me this 2nd day of July, 1948.

(Seal) R. M. MCLEOD,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires Dec. 9, 1950.

IN THE

Supreme Court of the United States

October Term, 1947

No.....

PAUL W. SAMPSELL, as Trustee in Bankruptcy for the Estate of C. A. REED FURNITURE COMPANY, a corporation, Bankrupt,

Petitioner,

vs.

LAWRENCE WAREHOUSE COMPANY, a corporation,

Respondent.

BRIEF IN SUPPORT OF PETITION.

Petitioner adopts the Summary and Short Statement of Matter Involved, contained in his Petition, as the statement of facts herein, and also adopts the statement of Jurisdiction contained in such Petition.

Specifications of Error.

The Circuit Court erred in affirming the Summary Judgment entered by the District Court. Stated in another way, both of those courts erred in holding that the California Civil Code sections relied upon by petitioner as invalidating the pledge, had been repealed by the adoption of the Warehouse Receipts Act, and that, consequently, the complaint did not state a cause of action.

ARGUMENT.

I.

Sections 1858(b) and 1858(f) of the Civil Code Were Not Repealed by the Adoption of the "Uniform Warehouse Receipts Act."

Section 60 of the "Uniform Warehouse Receipts Act" provides that "all acts or parts of acts inconsistent with this act are hereby repealed." There is nothing inconsistent in the provisions of Sec. 1858(b) requiring that the rate of storage charges be shown. In fact, the Uniform Warehouse Receipts Act requires that the rate of storage charges be shown on the receipt also (Sec. 2(e) Act 9059 General Laws). In this connection, there is no substantial difference between the Civil Code Sections and the Warehouse Receipts Act except that the Civil Code Sections make it a criminal act to violate the provisions as to these requirements. Therefore, instead of being inconsistent, the two Acts harmonize with one another.

There has been no repeal by implication because both Acts are capable of being read together and there is no provision in one which is repugnant to the other in so far as the requirement that the receipt show the storage charges. The fact that two Acts may be different is not sufficient to invoke the doctrine of repeal by implication. There must be such irreconcilable repugnancy that the two cannot possibly stand together.

In 23 California Jurisprudence (Statutes), Sec. 85, at page 698, the rule is stated:

> "Whenever there is an irreconcilable conflict or repugnancy between the provisions of two acts, so that upon any reasonable construction they cannot stand together, the earlier act is repealed by the later one, without any repealing clause, an intention to repeal

the prior statute being necessarily implied in such case. But, in view of the presumption against implied repeals, and the recognized duty of the courts to give effect, as far as possible, to all statutes not expressly repealed, it is settled that the inconsistency or repugnancy between the two must be irreconcilable and very clear in order that an implied repeal may be said to exist. Repugnancy between two acts in principle merely forms no reason why both may not stand."

See also:

People v. Carter, 131 Cal. App. 177 at p. 181;

Napa State Hospital v. Yuba County, 137 Cal. 378 at 383;

People v. Platt, 67 Cal. 21 at 22; and

59 Corpus Juris. (Statutes), Sec. 520 at p. 921.

The California courts have expressly repudiated the theory that the Civil Code sections were repealed by the adoption of the Warehouse Receipts Law.

In *Lewis-Simas-Jones Co. v. C. Kee & Co.,* 27 Cal. App. 135, plaintiff sued the defendant for the purchase price of potatoes sold by plaintiff while they were stored in a public warehouse. Plaintiff did not transfer any warehouse receipts to the defendant, but gave the defendant a written order on the warehouseman, directing delivery of the potatoes to the defendant. Later the defendant repudiated the transaction and claimed that there had been no delivery of the potatoes.

The Court concerned itself with the question whether there had been a symbolic delivery by giving the defendant the written order on the warehouseman. It rejected the appellant's contention that the Warehouse Receipts Act

of 1909 exclusively governed the transfer of warehoused merchandise. Under Sections 37-43 of that Act, it was necessary for plaintiff to have transferred his warehouse receipts to the defendant to accomplish a transfer or delivery of the potatoes, and defendant had not done this. The Court said that the law as it existed prior to the Warehouse Receipts Act and as it was embodied in Section 1858(d) of the Civil Code, permitted the delivery of the warehoused property "upon the written order of the person to whom the receipt was issued."

This is a direct decision to the effect that the "Uniform Warehouse Receipts Act" did not repeal the Civil Code sections, and in referring to the "Uniform Warehouse Receipts Act," the Court said, at page 138:

> "Upon the reading of the entire act we do not find that there is anywhere expressed in it an intention to require a departure from the rule laid down in the earlier cases and remaining unchanged up to the time of its passage, making the written order of a depositor of goods in a warehouse, upon which there has been issued a non-negotiable receipt, sufficient to pass, by its delivery, receipt, and acceptance, the title and symbolical possession of personal property not capable of manual delivery so as to satisfy the statute of frauds, and entitled the seller to recover from the buyer its purchase price."

In *Norton v. Lyon Van & Storage Co.*, 9 Cal. App. (2d) 199, plaintiff's action was predicated upon the warehouse company's wrongful refusal to return his goods, and the question was whether the warehouse company had lawfully enforced its lien thereon for storage. The plaintiff on his appeal contended that the Warehouse Receipts Act providing for notice of sale in the enforcement of the lien

was unconstitutional. The Court first said that it saw no reason for not sustaining the constitutionality of the Act, in so far as the provisions relating to warehousemen's liens were concerned. It then went on to say, at page 204:

> "Even in the absence of the Warehouse Receipts Act, a depositary for hire has a lien for storage charges and expenses of sale (Civ. Code, secs. 1856, 3051), and in the event of nonpayment may sell the property deposited. (Civ. Code, sec. 3052.)"

Section 1856 of the Civil Code, referred to in the above opinion relates to the lien of a depositary for storage, and the recognition of the continued operation of this section is also a direct decision that the Civil Code sections relating to warehousing were not repealed by the enactment of the Warehouse Receipts Act.

In *A. Widemann Co. v. Digges,* 21 Cal. App. 342, the Court affirmed a judgment in favor of the plaintiff upon a sales agreement for the sale of warehoused grain. In answer to the contention that there had been no timely tender of delivery on the plaintiff's part, the Court said, at page 348:

> "The transfer of negotiable warehouse receipts is a symbolical delivery of the goods called for by them, and passes the title thereto as effectually as if an actual delivery had been made. (Civ. Code sec. 1858(b).)"

This transaction took place in 1910, a year after the adoption of the Uniform Warehouse Receipts Act, and the decision of the Supreme Court was on February 28, 1913, four years after the adoption of the Uniform Warehouse Receipts Act.

In *Chatterton v. Boone,* 81 A. C. A. 1108 (decided October 20, 1947), the Court affirmed a judgment against the defendant warehouse company for damages resulting from a fire on the theory that the warehouse company had failed to exercise reasonable care in the protection and preservation of the goods after the fire, as required by Section 1858(e) of the Civil Code.

In *Northwestern M. F. Assn. v. Pacific Co.,* 187 Cal. 38, in determining the liability of the warehouse company for destruction of goods by fire, the Court referred to and quoted the provisions of Section 1858(e) of the Civil Code as governing the care to be exercised.

In *Defense Supplies Corporation v. Lawrence Warehouse Company,* District Court, N. D. California, S. D., 67 Fed. Supp. 16, the defendant warehouse company was sued along with other defendants for damages to tires which had been warehoused, and the Court referred to both the provisions of the Civil Code and the Warehouse Receipts Act as concurrently governing the liability. On page 20, the Court said:

> "If Capitol Chevrolet Company, the agent of Lawrence Warehouse Company, failed to use reasonable care for the preservation of plaintiff's goods whereby the damage was caused or contributed to, Lawrence Warehouse Company is liable to plaintiff. California Warehouse Receipts Act, Sec. 21, Gen. Laws, Act 9059; California Civil Code, Sec. 1858e."

The above cited cases all demonstrate that the courts continue to regard the Civil Code sections dealing with

warehousing as concurrently effective along with the Warehouse Receipts Act. The last three of those cases deal with the care to be exercised by warehousemen as defined by Section 1858(e) of the Civil Code, but as is pointed out in the *Defense Supplies Corporation* case, Section 21 of the Warehouse Receipts Act also deals with the subject of care, and yet the courts have not interpreted this as a repeal by implication of the Civil Code sections dealing with the care to be exercised by warehousemen.

II.

None of the Three Decisions Cited by the Circuit Court Opinion Are Pertinent.

The Circuit Court of Appeals first cites *Commercial National Bank v. Canal-Louisiana B. & T. Co.*, 239 U. S. 520, 528, 529, as authority for the proposition that the Warehouse Receipts Law repealed previously existing laws. That case did not involve the repeal of previous statutes by implication. It involved the question whether case law previously existing which was in conflict with the Warehouse Receipts Law when adopted in Louisiana continued to be operative and the Court held that the purpose of the Warehouse Receipts Law was to create a uniformity. If the case had involved statutes similar to the Civil Code sections of the State of California, the Court would have been confronted with a different problem.

The case of *Heffron v. Bank of America*, 113 F. (2d) 240, has already been dealt with in our petition for certiorari.

In the case of *Jewett v. City Transfer & Storage Co.*, 128 Cal. App. 556, the Court held that the remedy provided by Section 3052 of the California Civil Code with respect to enforcement of storage liens, was not applicable in view of the fact that Sec. 33 of the Warehouse Receipts Act provided a similar procedure by sale and the only difference was the manner of giving notice. The Court stated that the enactment of the Warehouse Receipts Act did not preclude other remedies for the enforcement of a lien against personal property but since the remedy provided in Section 3052 of the Civil Code was the same except for the manner of giving notice that it could not be relied upon as excusing the type of notice required by Sec. 33 of the Warehouse Receipts Act.

The later case of *Norton v. Lyon Van & Storage Co., supra,* involved the identical code section and reached an opposite result. It should further be noted that we are not concerned with the question whether compliance with a section of the Civil Code excuses compliance with a provision of the Warehouse Receipts Law. As applied to the case at bar, both statutes require that the rate of storage charges be shown on the face of the receipt, the difference being that the Civil Code sections make it a felony for a warehouse company to issue a warehouse receipt that does not comply. We are not concerned with a situation where respondent can show compliance with the Warehouse Receipts Law as an excuse for failing to comply with the Civil Code sections. It did not comply with either of these statutes.

III.

The Warehouse Receipts Were Invalid Because Issued by Defendant Warehouse Company in Violation of Sections 1858(b) and 1858(f) of the Civil Code.

Sec. 1858(b) of the Civil Code requires that warehouse receipts show on their face the rate of storage charges per month or per season, and Sec. 1858(f) of the Civil Code makes it a felony for anyone to issue a warehouse receipt which does not comply with the requirements of Sec. 1858(b). The receipts having been issued in violation of a criminal statute are, therefore void.

See:

Berka v. Woodward, 125 Cal. 119 at 127 and 129;

Wread v. Coffee-Murray, Inc., 42 Cal. App. (2d) 783 at 785 and 786;

Smith v. Bach, 183 Cal. 259;

Napa Valley Elec. Co. v. Calistoga Elec. Co., 38 Cal. App. 477;

King v. Johnson, 30 Cal. App. 63;

Wise v. Radis, 74 Cal. App. 765;

Firpo v. Murphy, 72 Cal. App. 249;

Buffendeau v. Brooks, 28 Cal. 641;

La Rosa v. Glaze, 18 Cal. App. (2d) 354;

Stockton Plumbing & Supply Co. v. Wheeler, 68 Cal. App. 592;

Otten v. Riesener Chocolate Co., 82 Cal. App. 83;

Boss v. Silent Drama Syndicate, 82 Cal. App. 109;

California Delta Farms v. Chinese American Farms, 207 Cal. 298;

City of Los Angeles v. Walterson, 8 Cal. App. (2d) 331;

Duntley v. Kagarise, 10 Cal. App. (2d) 397;

Hiroshima v. Bank of Italy, 78 Cal. App. 362;

Shasta County v. Woody, 90 Cal. App. 519;

Young v. Laguna L. & W. Co., 53 Cal. App. 178;

6 *California Jurisprudence* (*Contracts*), at page 105; and

17 *Corpus Juris Secundum,* at page 555.

IV.

The Warehouse Receipts Constitute the Documents Pledged and, Being Void, the Pledge Conferred No Rights Upon the Pledgee Bank Whatsoever.

See:

Hollywood State Bank v. Wilde, 70 Cal. App. (2d) 103.

V.

It Is Not Necessary That the Statute Confer Any Right to Recover Property Which Has Been Parted With Under an Illegal and Void Contract as the Law Furnishes the Implied Contract to Compensate for Such Property.

See:

Hollywood State Bank v. Wilde, 70 Cal. App. (2d) 103 at 112;

Reno v. American Ice Machine Co., 72 Cal. App. 409 at 413;

Black v. Solano Co., 114 Cal. App. 170 at 176;

Cecil B. DeMille Productions v. Wooley (9th Circuit), 61 F. (2d) 45 at 48;

Randall v. California L. B. Syndicate, 217 Cal. 594 at 598;

Castle v. Acme Ice Cream Co., 101 Cal. App. 94;

Mary Pickford Co. v. Bayley Bros., Inc., 12 Cal. (2d) 501 at 519; and

Hertz Drivurself Stations v. Ritter (9th Circuit), 91 F. (2d) 539.

VI.

The Warehouse Receipts Being Void and Thereby Invalidating the Entire Pledge, the Pledgee Bank Had No Lien Which Entitled It to Any Priority Over General Creditors and Had No Right to Take Possession of the Warehoused Property Where Such Depended Upon a Valid Pledge. It Is Liable, Therefore, to Return to the Trustee the Value of Such Warehoused Property, That Is the Proceeds Which It Received From Its Sale and Disposition.

See:

Corn Exchange N. B. & Tr. Co. v. Klauder, 318 U. S. 434;

In re Talbot Canning Corp., 35 Fed. Supp. 680, and 39 Fed. Supp. 858;

Kirst v. Buffalo Cold Storage Co., 36 Fed. Supp. 401;

In re Herksimer Mills Co., Inc., 39 Fed. Supp. 625;

Susquehanna T. & S. D. Co. v. U. T. & T. Co., 6 F. (2d) 179;

In re Silver Cup Bar & Grill, 50 Fed. Supp. 528;

In re Seim Const. Co., 37 Fed. Supp. 855;

Arena v. Bank of Italy, 194 Cal. 195;

Chichester v. Commercial Credit Co., 37 Cal. App. (2d) 439;

In re Boswell, 95 F. (2d) 239;

Secs. 96(a), 96(b), 107(e) and 110(e) of 11 U. S. Code Ann.; and

8 Corpus Juris Secundum (Bankruptcy), page 841.

VII.

The Act of Defendant Warehouse Company in Delivering the Warehoused Property to Defendant Bank Constituted a Conversion Rendering the Warehouse Company Liable in Damages for the Value of Such Warehoused Property.

See:

Sec. 10, Act 9059, *General Laws of California;* and

Aronson v. Bank of America, 9 Cal. (2d) 640 at 643.

Plaintiff does not contend that the defendant bank cannot participate in the assets of the bankrupt along with other general creditors but he does contend that such defendant bank should not have the benefits of a lien claimant where the lien is void. By the same token, defendant warehouse company may have a claim against the defendant bank to recover the value of the building materials which the warehouse company illegally delivered to that bank.

VIII.

The Fact That Section 1858(f) of the Civil Code, in Addition to Specifying a Criminal Penalty Provides That a Person Injured Can Sue for Damages, Does Not Operate to Make the Warehouse Receipts Issued in Violation of the Criminal Provisions Valid.

In view of the fact that the basis of the Circuit Court's ruling was not the same as that of the District Court and that neither of these two courts gave any indication of agreeing with the reasoning of the other, we should demonstrate that the reasoning of the District Court was

equally untenable. The District Court said in its memorandum of opinion:

> "The statutes under consideration (Sections 1858 (b)(f) California Civil Code and Act 9059, California General Laws) have provided both civil and criminal (47) remedies for failure to comply with the statute. When this is the case, the general rule to the effect that when an instrument is issued in violation of a penal statute, it is invalid, does not apply." [R. 50.]

In other words, the District Court ruled that since Section 1858(f) of the Civil Code contained a provision for a civil remedy that this demonstrated a legislative intent that a receipt issued contrary thereto should not be void. Such decision is at variance with the law as announced by the California decisions and also is contrary to the principle universally followed by the Federal Courts in dealing with criminal statutes which also provide civil remedies. The California courts have held in two instances where the Legislature expressly provided that a contract in violation of a criminal statute should not be void but merely voidable, that in spite of such statute, the contract was absolutely void:

See:

Berka v. Woodward, 125 Cal. 119 at pages 127, 129; and

Wread v. Coffee-Murray, Inc., 42 Cal. App. (2d) 783 at 785 and 786.

If the Legislature cannot confer conditional validity on an illegal contract by expressly making it voidable and not void, it certainly cannot make such a contract valid by specifying a civil remedy to a party injured. In fact, it has been held that express statutory provisions for a

particular remedy or relief do not destroy remedies and rights of recovery which already exist under the common law.

See:

Estate of Ward, 127 Cal. App. 347 at 354.

There have been numerous instances of Federal statutes making particular acts unlawful and providing for civil remedies to persons damaged thereunder. In all of these instances the Federal courts have held that a contract in violation of such criminal statute is void.

As to cases involving violation of the anti-trust laws, see:

Dr. Miles Medical Co. v. Park & Sons Co., 220 U. S. 373, 408, 409;

Continental Wallpaper Co. v. Louis Voight & Sons Co., 212 U. S. 227, 261, 263;

Standard Co. v. Magrene-Houston Co., 258 U. S. 346, 357;

Vitagraph, Inc. v. Theatre Realty Co., Inc., 50 F. (2d) 907, 908;

U. S. v. Addyston Pipe & Steel Co., 85 Fed. 271, 279, 282;

Darius Cole Transportation Co. v. White Star Line, 186 Fed. 63, 68; and

Morey v. Paladini, 187 Cal. 727 at 736.

As to cases involving violations of the Emergency Price Control Act, see:

Long Island Structural Steel Co., Inc. v. Schiavone-Bonomo Corporation, District Ct. S. D. New York, 53 Fed. Supp. 505 (affirmed without an opinion in 142 F. (2d) 557); and

Morgan Ice Co. v. Barfield, et al., Court of Civil Appeals of Texas, 190 S. W. (2d) 847.

As to cases involving violations of the Fair Labor Standards Act, see:

Jewel Ridge Coal Corp. v. Local No. 6167, U. M. W. A., 325 U. S. 161, 89 L. Ed. 1534;

Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123, 321 U. S. 590, 88 L. Ed. 949;

Eustice v. Federal Cartridge Corporation, 66 Fed. Supp. 55;

Walling v. Richmond Screw Anchor Co., 59 Fed. Supp. 291; and

Chepard v. May, 71 Fed. Supp. 389.

We respectfully submit that the District Court was right when it refused to embrace the contention that a criminal statute relating to warehouse receipts was repealed by a subsequent statute which did not deal with the subject criminally. By the same token, the District Court was in error in predicating its decision upon the ground that the provisions for a civil remedy saved the warehouse receipt from becoming invalid. On the other hand, the Circuit Court was correct when it failed to embrace the reasoning of the District Court but it was wrong in invoking the contention that the Warehouse Receipts Act repealed the Civil Code sections.

For the reason above assigned, petitioner prays that a Writ of Certiorari be granted.

Respectfully submitted,

THOMAS S. TOBIN,
Attorney for Petitioner.

FRANK C. WELLER and
JAMES A. MCLAUGHLIN,
Of Counsel.

APPENDIX.

Section 1858b of the California Civil Code provides as follows:

"Sec. 1858b. **Warehouse receipts, classification and effect of.** Warehouse receipts for property stored are of two classes: first, transferable or negotiable; and second, non-transferable or non-negotiable. Under the first of these classes the property is transferable by indorsement of the party to whose order such receipt was issued, and such indorsement is a valid transfer of the property represented by the receipt, and may be in blank or to the order of another. All warehouse receipts must distinctly state on their face for what they are issued and its brands and distinguishing marks and the rate of storage per month or season, and in the case of grain, the kind, the number of sacks, and pounds. If a receipt is not negotiable, it must have printed across its face in red ink, in bold, distinct letters, the word 'non-negotiable.' (Added by Stats. 1905, p. 612.)"

Section 1858f of the California Civil Code provides as follows:

"Sec. 1858f. **Penalties and liabilities.** Every warehouseman, wharfinger, or other person who violates any of the provisions of sections eighteen hundred and fifty-eight to eighteen hundred and fifty-eight e, inclusive, is guilty of a felony, and, upon conviction thereof, may be fined in a sum not exceeding five thousand dollars or imprisonment in the state prison not exceeding five years, or both. He is also liable to any person aggrieved by such violation for all damages, immediate or consequent, which he may have

sustained therefrom, which damages may be recovered by a civil action in any court of competent jurisdiction, whether the offender has been convicted or not. (Added by Stats. 1905, p. 613.)"

The Warehouse Receipts Act is embodied in Act 9059, Deering's California General Laws. (Stats. 1909, p. 437; Amended by Stats. 1919, p. 398; Stats. 1923, p. 676; Stats. 1931, p. 1501; Stats. 1933, p. 2398; Stats. 1937, p. 2472.) The following sections of that Act are the ones material to the question whether it repealed the Civil Code sections either expressly or by implication.

"Sec. 2. **Contents of receipts: Liability for omission.** Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

(a) The location of the warehouse where the goods are stored,

(b) The date or issue of the receipt,

(c) The consecutive number of the receipt,

(d) A statement whether the goods received will be delivered to the bearer, or to a specified person, or to a specified person or his order,

(e) The rate of storage charges,

(f) A description of the goods or of the packages containing them,

(g) The signature of the warehouseman, which may be made by his authorized agent,

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouse-

man claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required."

"Sec. 57. **Interpretation of act.** This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it."

"Sec. 60. **Repeal of conflicting acts.** All acts or parts of acts inconsistent with this act are hereby repealed."

Section 3440.5 of the Civil Code provides as follows:

"Sec. 3440.5. (Same: Limitation on application of rule: Goods for which warehouse receipt has issued: Necessity for retention of copy.) Section 3440 of this code shall not apply to goods in a warehouse where a warehouse receipt has been issued therefor by a warehouseman as defined in the Warehouse Receipts Act, and a copy of such receipt is kept at the principal place of business of the warehouseman and at the warehouse in which said goods are stored. Such copy shall be open to inspection upon written order of the owner or lawful holder of such receipt. (Added by Stats. 1939, p. 2840; Am. Stats. 1941, ch. 1142, sec. 1.)